FILE COPY

Office Supreme Court, U.S.
FILED
SEP 21 1961
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 291

PAUL GINSBURG, Petitioner,

v.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PAUL GINSBURG,
Counsel for Petitioner

Carlton House
529 Grant Street
Pittsburgh 19, Pennsylvania

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

NO. 291

PAUL GINSBURG, Petitioner,

v.

AMERICAN BAR ASSOCIATION, an Unincorporated Association, JOSEPH D. STECHER, GEORGE B. CHRISTENSEN, THOMAS A. REYNOLDS, JAMES D. HEAD, and WINSTON, STRAWN, SMITH & PATTERSON, a Partnership, Respondents.

PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

To the Honorable, the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The "answers" of the respondents herein could not comply with paragraph 1 of Rule 24 of this Court, and they fail to comply therewith because they do not disclose "any matter or ground why the cause should not be reviewed by this Court".

The "answer" of American Bar Association and Joseph D. Stecher will be referred to herein as "ABA Answer". The "answer" of George B. Christensen, Thomas A. Reynolds, James D. Head, and Winston, Strawn, Smith & Patterson will be referred to herein as "Winston Answer".

For reply to the statement on page 2 of the ABA Answer, "We ignore plaintiff's vituperations and his criticisms of the District Judge, of the Judges of the Court of Appeals, and of defendants' attorneys as unworthy of reply", it is respectfully submitted that said statement is just as untenable and insupportable as the "Reasons for the Denial of the Petition" at pages 2-7 therein. Respondents could not and did not quote a single vituperation. Undoubtedly respondents' problem lies in mistaking unpleasant facts for vituperations. So far as the criticisms of District Judge Walter J. La Buy, of the Judges of the Court of Appeals and of defendants' attorneys are concerned, an explanation by way of reply was indeed required, but respondents cannot justify or explain away said criticisms without getting in deeper or becoming more invclved, and so they substituted therefor a defensive brush-off which is analogous to a plea of *nolo contendere*.

In both the Winston Answer and the ABA Answer, respondents have misrepresented to this Honorable Court your petitioner's Complaint as well as the law applicable thereto. In the lower courts in Chicago they were so persuasive with that maneuver that District Judge La Buy readily accepted their misrepresentations as true, and favored them with a dismissal of the Com-

plaint without bothering to hear oral arguments or even to read your petitioner's Answers in opposition to their Motion to Dismiss (which never left the Clerk's Office prior to appeal). District Judge La Buy must have been positively convinced of the righteousness of his Bar-Chamber Decree, because he opined that it did not even require a supporting Opinion. The Judges of the Court of Appeals were far more democratic about the cause, as they declined to put their stamp of affirmance on that decree until after they had permitted your petitioner his right to go through an oral argument.

Now these respondents seek to have this Honorable Court dispense the same brand of La Buy "justice" by trying to persuade it to deny a review on certiorari. They are advocating that this Honorable Court should see to it that your petitioner receive the same treatment accorded the political prisoner in an Iron Curtain Country, who was assured by the Dictator that he would receive a fair trial, be convicted and hanged.

Conspicuous by absence from both the Winston Answer and the ABA Answer is any legal opposition whatever to the wealth of authorities cited by your petitioner in support of his Reasons Relied on for the Allowance of the Writ.

In the couple of pages comprising the Winston Answer there is no brief in opposition at all to the Petition. Although the ABA Answer is three times as long, it is quite as feeble. Accordingly, all of the respondents are simply notifying this Honorable Court what they want it to do, rather than what it should do. No wonder the respondents all resorted to "Answers" instead of the

customary and usual Brief in Opposition that is presented by experienced practitioners.

In the Winston Answer reference is made on pages 2-3 to the Motion for Protective Order Under Rule 30, lodged in the District Court by respondent George B. Christensen, *pro se*. Respondents' assertion that petitioner did not include same in the Appendix in the Court of Appeals is correct, but the reason is the fact that their document is scandalous and impertinent. It is likewise correct that it is not in the record certified to this Court. Since your petitioner has not been notified of a counter-designation of record herein, or that a certified copy thereof has been filed herein, it is respectfully submitted that said Motion for Protective Order Under Rule 30 is still not included in the record before this Court, even though respondents have printed what purports to be a copy of it as an "appendix" to their "answer".

The said respondents' printing of that document as an appendix is an outright violation of the practice in this Court, and gives justification to an argument by your petitioner that it was a tricky way of getting into print, for distribution from coast to coast, of a scandalous and impertinent document which is violative of the Canons of Professional Ethics of respondent American Bar Association.

It is denied by petitioner that the "averments of fact" contained therein "have never been contradicted". Furthermore, the answer thereto manifests how wholly without merit is the motion.

Your petitioner now is obliged to lodge with the Clerk of this Court for filing a certified copy of his An-

swer to Motion for Protective Order Under Rule 30 printed on pages 5-6 of his Reply Brief in the Court of Appeals, plus nine additional copies for the use of this Court, which accompany this Reply Brief; and further to reprint it herein, not as an appendix but as a reply, as follows:

"Now, comes Paul Ginsburg, the plaintiff herein, and makes Answer to the Motion for Protective Order Under Rule 30 of George B. Christensen, *one* of the defendants herein, *pro se*, moving "that an order be entered herein that the plaintiff not be permitted to take any depositions herein until further order of the Court", and moves that this Honorable Court enter an Order that this one defendant's said motion be stricken and dismissed or denied and dismissed; and avers:

"1. Notice of the said motion was not served in accordance with the Federal Rules of Civil Procedure pertaining to Notice.

"2. The defendant's motion fails to comply with Rule 30.

"3. The motion is replete with averments that are scandalous, impertinent, incompetent, and improper for insertion in a pleading under Rule 30, and are inserted for the express and obvious purpose of precluding a fair and impartial disposition of plaintiff's rights under his Complaint and the Notice of depositions filed in accordance with the Federal Rules of Civil Procedure.

"4. The scandalous matters inserted in the motion display a disregard for the Federal

> Rules of Civil Procedure and propriety of pleading, and they evidence a total lack of good faith towards this Honorable Court in the presentation of a scandalous and dilatory pleading.
>
> "WHEREFORE, plaintiff respectfully prays that this Honorable Court enter an Order that this one defendant's motion be stricken and dismissed or denied and dismissed."

That insupportable protective order was to protect the respondents from their liabilities imposed by law. Through it, the petitioner was denied his right to take depositions, prior to which the respendents had no right to a detailed complaint. Why did the respondents hasten to block discovery and to prevent a showdown on the facts? Would they not have welcomed full disclosure if they were innocent of the conspiracy as alleged in the Complaint? They impertinently referred to the "10 year background of the instant case" and the proceedings "instituted and lost by appellant," without confessing, of course, that all losses were on illegal technicalities. Their fear of full disclosure could certainly have been motivated by a realization that it would resurrect their fraud in procuring a Court Order in the Estate of Sallie A. Hert, Deceased, to sell to their (other) client 85% of the shares of stock of the American Creosoting Company and its subsidiaries, which fraud resulted in depriving beneficiaries of the Estate of millions of dollars and, in the course thereof, unnecessarily and unlawfully defaming your petitioner. *Regardless of its background, the instant case was less than one year old.*

Furthermore, one would expect respondent Christensen to conceal rather than boast of the various cases

involving the late Judge Sullivan of the District Court and the convictions of the Judge's brother, Harold E. Sullivan, Esquire.

With studied carelessness, respondent Christensen avoided any mention in his appendix of how he failed to persuade this Honorable Court to deny a review of the decision of the Court of Appeals which "sprung" Judge Sullivan's brother; and, after making the best argument of his career (October 17, 1957) this Honorable Court nevertheless reversed the Seventh Circuit and remanded the cause to the District Court, wherein the Judge's brother was also again indicted on additional counts. It is respectfully submitted that respondent Christensen and his partners in law indeed lost that cause on the merits. See *United States of America v. Shotwell Manufacturing Co., Harold E. Sullivan, et al.*, 355 U. S. 233.

CONCLUSION

Petitioner's Reasons Relied On for the Allowance of the Writ in his Petition are fully supported therein, establishing that the judgment sought to be reviewed conflicts with decisions on the same matters of the instant and other courts of appeals and with applicable decisions of this Court; and further that the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a departure by the District Court as to call for an exercise of this Court's power of supervision.

The "answers" of the respondents do not contain any legal opposition to the petition; nor do they disclose

any matter or ground why the cause should not be reviewed by this Court.

The weaknesses of the Answers emphasize the strength of the Petition.

Therefore, the petition for writ of certiorari should be granted.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner
Carlton House
550 Grant Street
Pittsburgh 19, Pennsylvania

Dated: 19 September 1960.